

**United States Bankruptcy Court
Central District of California
Riverside
Mark Houle, Presiding
Courtroom 301 Calendar**

Wednesday, September 6, 2023

Hearing Room 301

10:00 AM

6:23-11980 Brittany Rose Cummings-Barkley

Chapter 7

#1.00 Pro se Reaffirmation Agreement Between Debtor and Capital One Auto Finance, a division of Capital One, in the amount of \$36, 147.02, re: 2022 Honda Accord

EH__

Docket 17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brittany Rose Cummings-Barkley	Pro Se
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Trustee(s):

Todd A. Frealy (TR)	Pro Se
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10:00 AM

6:23-12737 Natnael Israel

Chapter 7

#2.00 Pro se Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation, in the amount of \$34,667.71 re: 2022 Mazda CX-5

EH ____

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Natnael Israel

Pro Se

Trustee(s):

Arturo Cisneros (TR)

Pro Se

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2:00 PM

6:14-22067 Gary S. Hann

Chapter 7

Adv#: 6:21-01018 Hann v. Sakaya et al

#3.00 CONT. Defendant's Francis Sakaya, Jacqueline Mbville Sakaya and Babalao Investors Motion for Summary Judgment, or in the alternative, partial Summary Judgment
(Motion filed 6/24/23)

From: 8/16/23

EH__

Docket 165

***** VACATED *** REASON: CONT. TO 9/27/23 BY ORDER ENTERED
9/5/23**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gary S. Hann

Pro Se

Defendant(s):

Francis P Sakaya

Represented By
Sanaz Sarah Bereliani

Jacqueline Mbville

Represented By
Sanaz Sarah Bereliani

Babalao Investors LLC

Represented By
Sanaz Sarah Bereliani

Movant(s):

Francis P Sakaya

Represented By
Sanaz Sarah Bereliani

Jacqueline Mbville

Represented By
Sanaz Sarah Bereliani

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CONT...

Gary S. Hann

Chapter 7

Babalao Investors LLC

Represented By
Sanaz Sarah Bereliani

Plaintiff(s):

Gary S Hann

Pro Se

Trustee(s):

Karl T Anderson (TR)

Represented By
Leonard M Shulman
Melissa Davis Lowe

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Wednesday, September 6, 2023

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6:14-22067 Gary S. Hann

Chapter 7

Adv#: 6:21-01018 Hann v. Sakaya et al

#4.00 CONT. Plaintiff's Motion For Summary Judgment under LBR 7056-1, Against Defendants Francis P. Sakaya, Jacqueline MBWillis, and Babalao Investors LLC (Motion filed 7/5/23)

From: 8/16/23

EH____

Docket 172

***** VACATED *** REASON: CONT. TO 9/27/23 BY ORDER ENTERED 9/5/23**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gary S. Hann

Pro Se

Defendant(s):

Francis P Sakaya

Represented By
Sanaz Sarah Bereliani

Jacqueline Mbwillie

Represented By
Sanaz Sarah Bereliani

Babalao Investors LLC

Represented By
Sanaz Sarah Bereliani

Movant(s):

Gary S Hann

Pro Se

Plaintiff(s):

Gary S Hann

Pro Se

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CONT... Gary S. Hann

Chapter 7

Trustee(s):

Karl T Anderson (TR)

Represented By
Leonard M Shulman
Melissa Davis Lowe

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6:14-22067 Gary S. Hann

Chapter 7

Adv#: 6:21-01018 Hann v. Sakaya et al

#5.00 CONT. Status Conference re: Complaint by Gary S Hann against Francis P Sakaya , Jacqueline Mbville , Babalao Investors LLC, Collis Griffor & Hendra PC , Stuart M Collis. (\$350.00 Fee Not Required). (Attachments: #(1) Part 2 of 4 #(2) Part 3 of 4 #(3) Part 4 of 4) Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)) ,(21 (Validity, priority or extent of lien or other interest in property)) ,(72 (Injunctive relief - other)) ,(91 (Declaratory judgment))

[Grants motion dismissing counts one through two and seven through ten, without leave to amend]

[Denied as to counts four and five]

[Granted as to counts three and six, with leave to amend]

From: 4/20/21,6/8/21,1/18/22, 4/6/22, 5/4/22, 6/1/22, 8/17/22, 10/26/22, 1/18/23, 3/29/23, 8/16/23

[HOLDING DATE]

EH__

Docket 1

***** VACATED *** REASON: CONT. TO 9/27/23 BY ORDER ENTERED 9/5/23**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gary S. Hann

Pro Se

Defendant(s):

Francis P Sakaya

Represented By
Sanaz Sarah Bereliani

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CONT...

Gary S. Hann

Chapter 7

Jacqueline Mbville

Represented By
Sanaz Sarah Bereliani

Babalao Investors LLC

Represented By
Sanaz Sarah Bereliani

Plaintiff(s):

Gary S Hann

Pro Se

Trustee(s):

Karl T Anderson (TR)

Represented By
Leonard M Shulman
Melissa Davis Lowe

**United States Bankruptcy Court
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6:22-13898 Mena Sadat

Chapter 7

Adv#: 6:23-01031 Cisneros v. Ahmadi et al

#6.00 Defendant's Motion to Set Aside Default
(Motion filed 8/10/23)

EH__

Docket 17

Tentative Ruling:

9/6/2023

BACKGROUND

On December 12, 2020, Mena Sadat ("**Debtor**") commenced a bankruptcy case by filing a Chapter 13 petition. In her filing she represented that she did not own any legal or equitable interest in any residence, building, land or similar property. On February 25, 2021, the bankruptcy court dismissed Debtor's Chapter 13 bankruptcy case based on Debtor's request for voluntary dismissal.

On March 5, 2021, the Debtor conveyed her one-half interest in a parcel of vacant property located in the City of Menifee, California (the "**Property**") by way of grant deed to David Ahmadi ("**Defendant**") for no consideration ("**First Transfer**"). Defendant had previously owned the other one-half interest in the Property, now making him the sole owner of the Property. On February 23, 2022, Defendant transferred his interest in the Property to Aaron Ahmadi ("**Co-Defendant**") for no consideration ("**Second Transfer**").

On October 16, 2022, Debtor filed for Chapter 7. A. Cisneros ("**Plaintiff**") was appointed as trustee of Debtor's Chapter 7 bankruptcy petition. On March 31, 2023, the Plaintiff filed a complaint ("**Complaint**") to avoid and recover avoidable transfer against the Defendant and Co-Defendant (collectively the "**Defendants**"). The summons was issued on April 3, 2023 and the proof of service of summons and complaint was filed on April 6, 2023. The summons stipulated that the Defendants

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CONT... Mena Sadat

Chapter 7

file a responsive pleading by May 3, 2023. On May 15, 2023, default was entered against the Defendant and the notice of entry of default was mailed to Defendant on May 17, 2023.

On August 10, 2023, Defendant filed a motion to set aside the default judgment ("**Motion**"). On August 23, 2023, Plaintiff filed an opposition ("**Opposition**"). On August 28, 2023, Defendant filed a reply ("**Reply**"). The hearing for the matter is scheduled for September 06, 2023.

ANALYSIS

FED. R. BANKR. P. Rule 7055 allows for the application of FED. R. CIV. P. Rule 55 in adversary proceedings. Under FED. R. CIV. P. Rule 55(c) "the court may set aside an entry of default for good cause". Once default judgment has been entered, the relief from it is governed by Rule 60(b). FED. R. CIV. P. Rule 60(b) provides six separate grounds for relief from a judgment. Plaintiff argues that Rule 60(b)(1), which provides for relief from judgment in cases of "mistake, inadvertence, or excusable neglect," is inapplicable here. As a general matter Rule 60(b) is remedial in nature and must be liberally applied. *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984) (per curiam); see also *TCI Group Life Ins. Plan v. Knoebber* (9th Cir. 2001) 244 F.3d 691, 696.)

While considering relief from default judgment pursuant to Rule 60(b)(1) the courts have regularly applied the three prong test: (1) whether the party seeking to set aside the default engaged in culpable conduct that led to the default; (2) whether it had no meritorious defense; or (3) whether reopening the default judgment would prejudice the other party." *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984); see also *TCI Group Life Ins. Plan v. Knoebber*, 244 F.3d 691, 696 (9th Cir. 2001). The party seeking to vacate a default judgment bears the burden of demonstrating that these factors favor vacating the judgment. *Id* at 696.

Prong I: Whether the party seeking to set aside the default engaged in culpable conduct that led to the default.

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Courts in determining culpable conduct have held that:

A defendant's conduct is culpable if he has received actual or constructive notice of the filing of the action and intentionally failed to answer. in this context the term 'intentionally' means that a movant cannot be treated as culpable simply for having made a conscious choice not to answer; rather, to treat a failure to answer as culpable, the movant must have acted with bad faith, such as an intention to take advantage of the opposing party, interfere with judicial decision making, or otherwise manipulate the legal process. We have typically held that a defendant's conduct was culpable for purposes of the good cause factors where there is no explanation of the default inconsistent with a devious, deliberate, willful, or bad faith failure to respond.

United States v. Mesle, 615 F.3d 1085,1092 (9th Cir. 2010) (quotations and citations omitted). Hence, simple carelessness is insufficient to treat a negligent failure to reply as inexcusable.

In determining culpability of a party's conduct the courts impose a high threshold. In *TCI Group Life Ins. Plan v. Knoebber*, the court determined that the defendant's delay in response was not culpable because of her exigent personal circumstances, especially her mental state, and because of her lack of familiarity with legal matters, and most importantly, because there was no suggestion that she deliberately tried to manipulate the legal system. *TCI Group*, 244 F.3d at 699.

Applying established understanding of culpable conduct, the record before this Court is devoid of any evidence which would establish the culpability of Defendant. Considering the circumstances disclosed by the Defendant around his health and his unfamiliarity with the legal matters, the Court finds it difficult to impute culpability to Defendant's delay in response. Rather, the record before the Court does not provide sufficient evidentiary support for a finding that Defendant intended to take advantage of the Plaintiff, interfere with judicial decision making, or otherwise manipulate the legal process. Hence the Motion passes this prong of the test.

Prong 2: Whether movant presents a meritorious defense.

A defendant seeking to vacate a default judgment must present specific facts that would constitute a defense. *Madsen v. Bumb*, 419 F.2d 4, 7 (9th Cir. 1969) But the

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Mena Sadat

Chapter 7

burden on a party seeking to vacate a default judgment is not extraordinarily heavy. *TCI Group Life Ins. Plan v. Knoebber* at 700. The Defendant need only demonstrate facts or law showing the court that a sufficient defense is assertible. That is to say, all that is necessary to satisfy the meritorious defense requirement is to allege sufficient facts that, if true, would constitute a defense: the question whether the factual allegation is true is not to be determined by the court when it decides the motion to set aside the default. Rather, that question would be the subject of the later litigation. *United States v. Mesle*, 615 F.3d 1085, 1094 (9th Cir. 2010).

The alleged meritorious defense is that the Defendant paid the entire purchase price for the Property; the Debtor was supposed to pay her half of the purchase price but never did, and the subsequent transfer of her half interest to Defendant simply reflected that reality. Defendant presents California caselaw supporting that the Debtor would arguably hold the Property in trust for Defendant as he has paid the entire purchase price. Plaintiff presents no authority or arguments in the Opposition.

Defendant has thus presented a potentially meritorious defense to Plaintiff's Complaint. Hence the Motion passes this prong of the test.

Prong 3: Whether reopening the default judgment would prejudice the other party.

Courts have held that for setting aside of a judgment to be prejudicial, it must result in greater harm than simply delaying resolution of the case, rather, the delay must result in tangible harm such as loss of evidence, increased difficulties of discovery, or greater opportunity for fraud or collusion. *TCI Group Life Ins. Plan v. Knoebber*, 244 F.3d 691, 701 (9th Cir. 2001). Further, "the standard is whether his ability to pursue his claim will be hindered." *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984). Plaintiff in the Opposition have not raised any argument alleging that they would suffer any legal prejudice.

TENTATIVE RULING

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Chapter 7

In light of the liberal standards for vacating a default judgment in the Ninth Circuit, the Court is inclined to GRANT the Defendant's Motion, VACATING entry of default under FRBP 9024 and FRCP 55(c) and 60 (b)(1).

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Mena Sadat

Represented By
David L Nelson

Defendant(s):

Noor David Ahmadi

Represented By
Mario Ashraf Iskander

Aaron Ahmadi

Pro Se

Plaintiff(s):

Arturo Cisneros

Represented By
Lazaro E Fernandez

Trustee(s):

Arturo Cisneros (TR)

Represented By
Lazaro E Fernandez
Lazaro E Fernandez

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6:20-10762 Daisy Wheel Ribbon Co., Inc.

Chapter 7

Adv#: 6:21-01031 Cisneros v. Briggs Law Corporation, a California Corporation

#7.00 Status Conference RE: [1] Adversary case 6:21-ap-01031. Complaint by Steven M. Speier, solely in his capacity as Chapter 7 Trustee of the bankruptcy estate of Daisy Wheel Ribbon Co., Inc. against Briggs Law Corporation, a California Corporation. (\$350.00 Fee Charge To Estate). Complaint For: 1. To Avoid And Recover Fraudulent Transfers Pursuant To 11 U.S.C. §§ 544(b), 548(a)(1)(A), and 550, and California Civil Code § 3439.04(A)(1); 2. To Avoid And Recover Fraudulent Transfers Pursuant To 11 U.S.C. §§ 544(b), 548(a)(1)(B) and 550, and California Civil Code §§ 3439.04(a)(2) and 3439.05; 3. Avoidance And Recovery Of Fraudulent Transfers Pursuant To 11 U.S.C. § 550(a); 4. To Recover And Preserve Transfers For The Benefit Of The Estate; 5. Disallowance Of Claims Pursuant To 11 U.S.C. § 502(b)(4); and 6. Disallowance Of Claims Pursuant To 11 U.S.C. §502(d) and (j) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)), (14 (Recovery of money/property - other)) (Goe, Robert)

From: 12/1/21, 2/9/22, 6/29/22, 8/18/22, 11/30/22, 2/15/23, 7/18 & 7/19 (Trial vacated)

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 10/4/23 BY ORDER
ENTERED 8/25/23**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Daisy Wheel Ribbon Co., Inc.

Represented By
Louis J Esbin

Defendant(s):

Briggs Law Corporation, a

Represented By

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CONT... Daisy Wheel Ribbon Co., Inc.

Chapter 7

Cory J Briggs
Todd Curry

Plaintiff(s):

Arturo M Cisneros

Represented By
Robert P Goe
Robert P Goe
Reem J Bello

Trustee(s):

Arturo Cisneros (TR)

Represented By
Reem J Bello
Robert P Goe